

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 2,799,507
For the mark MEYER VINEYARD
Date registered December 23, 2003

Meier's Wine Cellars, Inc.,)	
)	
Petitioner,)	
)	Cancellation No. 92044883
v.)	
)	
Meyer Intellectual Properties Limited,)	
)	
Registrant.)	
_____)	

FIRST AMENDED PETITION TO CANCEL

Attention: TTAB
Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

Meier's Wine Cellars, Inc., a corporation organized and existing under the laws of Ohio, with a principal place of business at 3116 Berea Road, Cleveland, Ohio 44111 (hereinafter "Petitioner"), believes that it will be damaged by registration of the mark shown in Registration No. 2,799,507, and hereby petitions to cancel such registration.

As grounds for this petition, it is alleged that:

1. Petitioner is the owner of the trademark MEIER'S.
2. Petitioner has used MEIER'S as a trademark for sparkling fruit juices since at least as early as 1895.
3. Petitioner has used MEIER'S as a trademark for wines since at least as early as 1935.

4. On November 7, 2002, Petitioner filed Application Serial No. 76/465,378 to register MEIER'S in the U.S. Patent and Trademark Office for:

SPARKLING FRUIT JUICES AND DEALCOHOLIZED
TRIPLE SEC in Class 32; and

STILL WINES, SPARKLING WINES, SHERRY WINES,
PORT WINES, MARSALA WINES, COOKING WINES, AND
SWEET AND DRY VERMOUTHS in Class 33.

5. Serial No. 76/465,378 has been refused registration pursuant to Section 2(d) of the Lanham Act in light of Registration No. 2,799,507 which was filed by Registrant on September 30, 2002, and issued December 23, 2003 in association with:

WINE in Class 33.

6. Registrant's mark, MEYER VINEYARD, as registered in association with WINE, so resembles Petitioner's MEIER'S mark for SPARKLING FRUIT JUICES AND DEALCOHOLIZED TRIPLE SEC in Class 32 and STILL WINES, SPARKLING WINES, SHERRY WINES, PORT WINES, MARSALA WINES, COOKING WINES, AND SWEET AND DRY VERMOUTHS in Class 33 as to be likely to cause confusion, to cause mistake, or to deceive, to the damage and injury of Petitioner and the purchasing public.

7. There is no issue as to priority. Petitioner's use of MEIER'S on SPARKLING FRUIT JUICES AND DEALCOHOLIZED TRIPLE SEC in Class 32 and STILL WINES, SPARKLING WINES, SHERRY WINES, PORT WINES, MARSALA WINES, COOKING WINES, AND SWEET AND DRY VERMOUTHS in Class 33 is significantly prior to the earliest date on which Registrant may rely, constructive or otherwise.

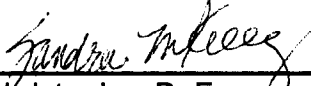
8. Continued existence of Registration No. 2,799,507 on the Supplemental Register will be a continued source of damage and injury to the Petitioner in that Petitioner will be unable to obtain a registration for MEIER'S for SPARKLING FRUIT JUICES AND DEALCOHOLIZED TRIPLE SEC in Class 32 and STILL WINES, SPARKLING WINES, SHERRY WINES, PORT WINES, MARSALA WINES, COOKING WINES, AND SWEET AND DRY VERMOUTHS in Class 33.

WHEREFORE, Petitioner prays that Registration No. 2,799,507 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Dated: November 23, 2005

Respectfully submitted,

FAY, SHARPE, FAGAN
MINNICH & McKEE, LLP

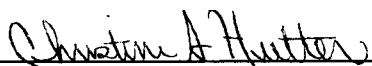


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Attorneys for Petitioner

CERTIFICATE OF MAILING


I hereby certify that this **FIRST AMENDED PETITION TO CANCEL** is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Attention: TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on November 23, 2005.


Christine A. Hutter

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **FIRST AMENDED PETITION TO CANCEL** was served by first class mail, postage prepaid, on November 23, 2005, on the following attorneys for Registrant:

Scott W. Petersen, Esq.
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By: 
Attorney for Petitioner